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*Attorneys for Defendants InComm Financial
Services, Inc. and Pathward, N.A.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KEVIN SMITH

Plaintiff,

vs.

INCOMM FINANCIAL SERVICES, INC. AND
PATHWARD, N.A.

Defendants.

Case No. 5:23-CV-4687-BF

**STIPULATED REQUEST FOR
ORDER GRANTING PLAINTIFF
LEAVE TO FILE AMENDED
COMPLAINT; ~~PROPOSED~~ ORDER**

Judge: Hon. Beth Labson Freeman

**STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED
COMPLAINT (Case No. 5:23-CV-4687-BF)**

Pursuant to Local Rules 6-1(b), 6-2, and 7-12 of the Local Rules of the United States District Court for the Northern District of California, Plaintiff Kevin Smith (“Plaintiff”) and Defendants InComm Financial Services, Inc. and Pathward, N.A. (“Defendants”), stipulate and agree as follows.

WHEREAS, Plaintiff filed his Complaint on September 12, 2023 (Dkt. No. 1);

WHEREAS, Plaintiff and Defendants entered a stipulation on November 16, 2023 to extend the time for Defendants to respond to the Complaint to December 15, 2023 (Dkt. No. 9);

WHEREAS, Defendants filed a motion to dismiss the Complaint on December 15, 2023 (Dkt. No. 22);

WHEREAS, the parties conferred and negotiated a schedule to file their respective briefs in opposition (March 7, 2024) and reply (March 28, 2024), in advance of the April 18, 2024 hearing (Dkt. No. 24);

WHEREAS, Plaintiff intends to file an amended complaint in lieu of a response to Defendants’ motion to dismiss;

WHEREAS, Plaintiff requests leave to file his Amended Complaint within 14 days from the date this stipulation is filed pursuant to Federal Rule 15(a)(2), which provides that the Court “should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2);

WHEREAS, without waiving any right to seek dismissal of the amended complaint, Defendants do not oppose Plaintiff’s request for leave to file an amended complaint;

WHEREAS, Plaintiff and Defendants agree that Defendants shall have 60 days from the filing of the amended complaint to file responsive motions;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND REQUESTED by and between the parties, through their respective attorneys of record, that the Court enter an Order:

- Granting Plaintiff leave to file an Amended Complaint by March 21, 2024;
- Setting a deadline of May 20, 2024 for each Defendant to respond to the Amended Complaint; and

STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED COMPLAINT (Case No. 5:23-CV-4687-BF)

- Vacating the Hearing on the Motion to Dismiss the Complaint, currently scheduled for April 18, 2024.

DATED: March 7, 2024

/s/ John D. Blythin

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Attorneys for Plaintiff

DATED: March 7, 2024

/s/ Brian H. Chun

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Attorneys for Defendants


SIGNATURE ATTESTATION

I hereby attest that I have obtained the concurrence of Brian H. Chun, counsel for Defendants, for the filing of this Stipulated Request.

/s/ John D. Blythin
John D. Blythin

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED


The Honorable Beth Freeman
United States District Judge

DATED: March 7, 2024

STIP. REQUEST FOR ORDER GRANTING PLAINTIFF LEAVE TO FILE A FIRST AMENDED COMPLAINT (Case No. 5:23-CV-4687-BF)